

REMARKS

Claims 1, 2, 4-21 and 23-42 are pending in the application. Claims 1, 2, 19-21 and 38 were rejected under 35 U.S.C. §102(e) as being anticipated by Saito. Claims 3 and 22 were rejected under 35 U.S.C. §103(a) as being unpatentable over Saito in view of Gandhi et al. Claims 9-14 were rejected under 35 U.S.C. §103(a) as being unpatentable over Saito in view of Zeira et al. Claims 4, 5, 23, 24, 28 and 30-33 were rejected under 35 U.S.C. §103(a) as being unpatentable over Saito in view of Gandhi as applied to claim 3, and further in view of Zeira. Claims 6-8 and 25-27 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 15-18 and 34-37 have been allowed.

Claims 3 and 22 have been canceled. Claims 1, 19, 20 and 38 have been amended. Claims 39-42 have been added, without new matter. Reconsideration and reexamination of the application in view of the amendments and following remarks is respectfully requested.

Claims 3 and 22 were rejected under 35 U.S.C. §103(a) as being unpatentable over Saito in view of Gandhi. Claims 4, 5, 23, 24, 28 and 30-33 were rejected under 35 U.S.C. §103(a) as being unpatentable over Saito in view of Gandhi as applied to claim 3, and further in view of Zeira.

Applicants respectfully submit that Gandhi is not prior art. The present application has a U.S. filing date of January 18, 2002, and priority under 35 U.S.C. § 119(e)(1) has been claimed to U.S. Provisional Application No. 60/262,689, filed on January 19, 2001. The pending claims of the present application are fully supported by U.S. Provisional Application No. 60/262,689. Gandhi has a U.S. filing date of March 5, 2001. Because U.S. Provisional Application No. 60/262,689 was filed before the U.S. filing date of Gandhi, Gandhi does not qualify as prior art under § 102(e). See MPEP 2141.01.

In view of the above, it is respectfully submitted that the rejection of claims 3 and 22 (now canceled) under 35 U.S.C. §103(a) as being unpatentable over Saito in view of Gandhi should have been withdrawn, and that the rejection of claims 4, 5, 23, 24 and 28-33 under 35 U.S.C.

§103(a) as being unpatentable over Saito in view of Gandhi as applied to claim 3, and further in view of Zeira should be withdrawn.

Claims 1, 2, 19-21 and 38 were rejected under 35 U.S.C. §102(e) as being anticipated by Saito. Claims 6-8 and 25-27 were objected to as being dependent upon a rejected base claim. Claims 9-14 were rejected under 35 U.S.C. §103(a) as being unpatentable over Saito in view of Zeira et al. Claims 1, 19, 20 and 38 have been amended to include all of the limitations found in claims 3 and 22 (now canceled).

With reference to claims 3 and 22, the Examiner states that Saito does not explicitly teach that the delta power level includes a pre-rescue power delta (including an offset) that is computed by subtracting the MS's mean receive power level from the MS's transmit power level, the MS mean receive power level and the MS transmit power level measured at a time power control bits were received by the MS prior to detection of the potentially failing connection. These are the limitations found in claims 3 and 22. Because these limitations have now been included in amended claims 1, 19, 20 and 38, Saito does not disclose all of the limitations of amended claims 1, 19, 20 and 38. Therefore, it is respectfully submitted that the rejection of 1, 19, 20 and 38 under 35 U.S.C. §102(e) as being anticipated by Saito has been overcome.

In addition, claims 2 and 6-14 depend from claim 1, and claims 21 and 25-27 depend from claim 20. Therefore, the rejection of claims 2, 9-14 and 21 and the objection to claims 6-8 and 25-27 have been overcome for the same reasons provided above with respect to claims 1 and 20.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

If, for any reason, the Examiner finds the application other than in condition for allowance, Applicants request that the Examiner contact the undersigned attorney at the Los Angeles telephone number (213) 892-5752 to discuss any steps necessary to place the application in condition for allowance.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing Docket No. 440402000700.

Dated: October 11, 2004

Respectfully submitted,

By 

Glenn M. Kubota

Registration No.: 44,197

MORRISON & FOERSTER LLP
555 West Fifth Street, Suite 3500
Los Angeles, California 90013
(213) 892-5200